

Theresa M. Marchlewski (SBN 82429)
Ellen E. Cohen (SBN 258131)
JACKSON LEWIS P.C.
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5408
Telephone: (213) 689-0404
Facsimile: (213) 689-0430
Email: theresa.marchlewski@jacksonlewis.com
Email: ellen.cohen@jacksonlewis.com

Attorneys for Defendants
PALISADES CHARTER HIGH SCHOOL and
AMY NGUYEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ROYA SAGHAFI, an individual,

Plaintiff,

vs.

PALISADES CHARTER HIGH SCHOOL, a
corporation; AMY NGUYEN, an individual; and
DOES 1 through 10,

Defendants.

CASE NO.: **BC708497**

*[Assigned for all purposes to the Honorable Ruth
Ann Kwan, Department 72]*

**DEFENDANTS PALISADES CHARTER
HIGH SCHOOL AND AMY NGUYEN'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO COMPEL INDEPENDENT MENTAL
EXAMINATION OF PLAINTIFF; AND
REQUEST FOR MONETARY SANCTIONS**

*[Filed Concurrently with the Notice of Motion;
Declarations of Ellen E. Cohen and James R.
High, M.D.; and [Proposed] Order]*

RESERVATION ID: 884806840494

Date: July 2, 2019
Time: 9:00 a.m.
Place: Department 72

Complaint Filed: June 1, 2018
FSC: July 19, 2019
Trial: July 29, 2019

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants Palisades Charter High School ("PCHS") and Amy Nguyen ("Nguyen") (collectively
4 "Defendants") bring this Motion for leave of Court for an Order permitting a mental examination of
5 Plaintiff Roya Saghafi ("Plaintiff"), or in the alternative, Motion to Compel IME, or in the alternative, to
6 exclude evidence of Plaintiff's alleged damages at trial ("Motion") on the grounds that Plaintiff has
7 undeniably placed her mental and emotional injuries in controversy. In her Complaint, Plaintiff alleges
8 that during her employment with PCHS, Defendants caused her to suffer mental and emotional injuries.
9 (Declaration of Ellen E. Cohen "Cohen Decl." ¶2, Exhibit A.) In addition, Plaintiff testified that she
10 may have been diagnosed with depression and anxiety prior to her employment with PCHS. In addition,
11 in March 2018, Plaintiff filed a claim against Access Specialty Animal Hospitals, et al, case number
12 SC128992, alleging (among other things) a cause of action for Intentional Infliction of Emotional
13 Distress. These facts seriously call into question the nature and degree to which Defendants in this case
14 may have caused Plaintiff to suffer any mental and/or emotional injuries.

15 Given these facts, there is no justifiable reason for Plaintiff not to submit to an independent
16 mental examination ("IME"). Yet Plaintiff and her counsel have steadfastly refused to produce Plaintiff
17 for an IME, despite various meet-and-confer efforts on this issue. Accordingly, Defendants had no
18 alternative but to file this Motion.

19 **II. STATEMENT OF FACTS**

20 **A. Plaintiff's Mental and Emotional Injuries Are Unquestionably at Issue.**

21 In her Complaint filed on June 1, 2018, Plaintiff set forth claims for (1) Intentional Infliction of
22 Emotional Distress; 2) Defamation per se; 3) Hostile Work Environment Harassment in violation of
23 FEHA; 4) Retaliation in Violation of FEHA; 5) Failure to Provide Timely Access to Employee Payroll
24 and Personnel Records; 6) Disparate Treatment (Discrimination) in violation of FEHA; 7) Failure to
25 Prevent Harassment, Discrimination or Retaliation in violation of FEHA.

26 Plaintiff claims that she was discriminated against and harassed by nearly every administrator
27 with whom she worked since 2002, including individual Defendant, Nguyen. Importantly, Plaintiff
28 alleges that because of Defendants' actions, she has suffered, and continues to suffer, severe emotional

1 distress. (Exhibit A ¶¶ 124, 126, 127, 147, and 158.)

2 **B. Plaintiff's Discovery Responses Clearly Demonstrate She is Making a Claim for**
3 **Emotional Distress**

4 On November 27, 2018, Plaintiff provided discovery responses which confirmed that she
5 suffered and continues to suffer from a host of mental and physical conditions, and her contention that
6 those conditions were due to alleged wrongful conduct she sustained at the hands of Defendants.
7 Specifically:

- 8 • Form Interrogatory No. 6.2: Plaintiff states that she attributes “emotional distress, anxiety
9 attack....nightmares, fear, headaches, stomachaches and nausea” to Defendants alleged
10 conduct.
- 11 • Form Interrogatory No. 6.3: Plaintiff states that nightmares, stress and anxiety have
12 worsened and that she suffers from anxiety all the time.
- 13 • Form Interrogatory No. 10.2: Plaintiff states that she suffered from “stress and anxiety
14 because of all the discrimination to which I was subjected at Pali High.”
- 15 • Form Interrogatory No. 10.3: Plaintiff states that she continues to “suffer from anxiety,
16 stress, worry, fear and depression.”
- 17 • Form Interrogatory 212.2: Plaintiff states that she attributes anxiety, headaches, shame,
18 stress, depression fear, stomachaches, feeling worthless and feeling humiliated to
19 Defendants’ alleged conduct.
- 20 • Form Interrogatory 212.3: Plaintiff states that she still experiences anxiety, sadness,
21 depression, disappointment, humiliation and embarrassment and that every day, she had
22 to “deal with stomachaches, feeling worthless, humiliation, fear, stress and depression.
23 Same, fear and severe anxiety.”

24 (Cohen Decl. ¶3-4, Exhibits B and C.)
25
26
27
28

1 **C. Plaintiff's Deposition Testimony Establishes that Plaintiff Filed Another Lawsuit in**
2 **March 2018 Against Alleging that She Suffered from Severe Emotional Distress**
3 **Unrelated to Her Employment with PCHS.**

4 In session one of her April 17, 2019¹ deposition, Plaintiff confirmed that in March 2018, Plaintiff
5 filed a claim against Access Specialty Animal Hospitals ("Access Lawsuit"), et al, case number
6 SC128992, alleging (among other things) a cause of action for Intentional Infliction of Emotional
7 Distress. (Cohen Decl. ¶¶ 5-6, Exhibits D-E) This lawsuit stemmed out of the alleged improper medical
8 treatment and death of Plaintiff's dog, who for all intents and purposes was like a surrogate child to
9 Plaintiff and Plaintiff's greatest source of joy, which occurred in 2017. (Cohen Decl., ¶ 5, pages 180:2-
10 188:10, 211:17-24) In that lawsuit, Plaintiff alleged that as a result of the conduct of the defendants in
11 the Access Lawsuit, which occurred in March 2017, she suffered from, and continues to suffer from,
12 severe emotional distress. (*Id.*, pages 188:24-190:14, 193:8-194:11, 203:16-20, 205:11, 212:6-215:3)

13 Plaintiff further testified (and alleged in the Access Lawsuit) that when she returned to work
14 following the death of her dog, she was "not the same. Normally very chatty, she only spoke as she
15 needed for work." (*Id.*, page 206:14 -209:16)

16 In addition, Plaintiff testified that following the death of her dog, she remained depressed and
17 withdrawn, refrained from talking to her friends for more than six months and did not attend any social
18 gatherings for eleven months. (*Id.*, page 210:21-23)

19 Further, Plaintiff testified, and alleged in the Access Lawsuit, that as a result of the treatment and
20 death of her dog, she suffered a severe case of terrifying and painful shingles in late 2017, which also
21 caused her to suffer emotional distress and extreme physical discomfort. (*Id.*, pages 194:18-203:9)

22 **D. Plaintiff Refuses to Stipulate to an IME**

23 Despite Plaintiff's claim that she is entitled to damages for her claimed emotional injuries
24 because of Defendants' alleged conduct, and the unequivocal testimony and evidence set forth above
25 which establishes that she has suffered alleged emotional distress during the very same time period,
26 entirely unrelated to Defendants' alleged conduct, as well as Plaintiff's concurrent pending lawsuit in
27 which she also claims that she suffered severe emotional distress, Plaintiff and her counsel have refused

28 ¹ The timing of Plaintiff's deposition was delayed to April 17, 2019, because Plaintiff would not make herself available for
dates other than scheduled PCHS breaks. Thus, Plaintiff's deposition had to be postponed until PCHS's spring break.

1 to have her submit to an IME.

2 Defendants have made several efforts to obtain the exam. On April 22, 2019, sent Plaintiff's
3 counsel a letter asking her to stipulate to an IME by April 29, 2019. (Cohen Decl. ¶7, Exhibit F.)
4 Defense counsel also included a draft stipulation, which stated that Plaintiff would be examined by Dr.
5 James High ("Dr. High"), the psychiatrist that would be conducting the IME. (See Exhibit F) On April
6 24, 2019 counsel for Defendants spoke to Plaintiff's counsel and explained the need for an IME and
7 possible further testing due to Plaintiff's unique condition and history, as well as Plaintiff's deposition
8 testimony regarding her lawsuit against Access Specialty Animal Hospitals. (Cohen Decl. ¶ 9) At that
9 time, Plaintiff's counsel indicated that she would confer with her client and advise whether or not
10 Plaintiff would stipulate to the IME. (*Id.*)

11 On April 30, 2019, defense counsel spoke to Plaintiff's counsel on the telephone and again
12 inquired whether Plaintiff would stipulate to an IME. (Cohen Decl. ¶ 10) At that time, Plaintiff's counsel
13 advised that she did not think that Plaintiff would be willing to stipulate but that she would confirm with
14 Plaintiff and notify defense counsel shortly. (*Id.*) Not having heard back from Plaintiff's counsel, on
15 May 6, 2019, defense counsel emailed Plaintiff's counsel and requested that Plaintiff confirm whether
16 she would agree to stipulate to an IME. (Cohen Decl. ¶ 11, Exhibit H) On or about May 7, 2019, defense
17 counsel served on Plaintiff's counsel Defendants' Demand for Independent Mental Examination
18 ("IME"). (Cohen Decl. ¶ 11, Exhibit I)

19 To date, Plaintiff has not confirmed whether or not she would stipulate to an IME.
20 Accordingly, Defendants had no choice but to file this Motion.

21 **E. The Proposed Mental Examination**

22 Defendants seeks an order compelling Plaintiff to submit to an IME performed by Dr. James
23 High ("Dr. High"), a licensed California forensic psychiatrist. (Cohen Decl. ¶ 6, Exhibit G.) This
24 examination shall occur on June 17, 2019² at 9:00 a.m. at Dr. High's office located at 1990 South Bundy
25 Drive, Suite 430, Los Angeles, California 90025, or a date as soon thereafter as Plaintiff and Dr. High
26 are available. This examination will not include any physically invasive tests. Rather, the IME will

27 ² Defense recognizes that the presently scheduled hearing date for the Motion is past the non-expert discovery cut-off date
28 and after tentatively scheduled IME date. However, this was the first available hearing date. Defense counsel anticipates
filing an *ex parte* application shortly to request the Court to specially set the hearing date on this Motion such that the IME
can take place prior to the non-expert discovery cut-off date. (Cohen Decl. ¶ 14)

1 consist of a detailed interview, mental status examination, and appropriate, generally accepted
2 standardized psychological testing and screening cognitive assessment. The testing may include,
3 depending upon time constraints and other factors, (1) Minnesota Multiphasic Personality Inventory-2
4 (MMPI-2-RF); (2) Personality Assessment Inventory (PAI); and (3) Trauma Symptom Inventory (TSI-
5 2). Dr. High will also determine whether any other tests such as cognitive screening instruments need to
6 be administered on the day of, and based on the findings of the psychiatric examination, and will notify
7 the parties. (Declaration of James High (“High Decl.”) ¶¶3-8)

8 **III. APPLICABLE LAW**

9 A court may order a mental examination where the moving party establishes good cause, which
10 may be shown by relevancy to the subject matter of the litigation and specific facts justifying the
11 discovery. Code Civ. Proc. § 2032.320(a); *Vinson v. Superior Court* (1987) 43 Cal.3d 833, 839.
12 California courts have held that “good cause” for a mental examination is shown where a plaintiff
13 alleges continuing mental and emotional distress as a result of the defendant’s actions. *Id.* at 840. Stated
14 differently, when a plaintiff claims continuing mental injury resulting from a defendant’s acts, she has
15 put her mental and emotional state in controversy; and the defendant is entitled to an independent mental
16 examination. *Id.* at 839 (ordering independent psychological exam of plaintiff when plaintiff put her
17 emotional state at issue; “a party who chooses to allege that he has mental and emotional difficulties can
18 hardly deny his mental state is in controversy”; *see also, Edwards v. Superior Court* (1976) 16 Cal.3d
19 905.

20 **IV. GOOD CAUSE EXISTS TO COMPEL PLAINTIFF TO SUBMIT TO AN IME BECAUSE** 21 **PLAINTIFF PUT HER MENTAL AND EMOTIONAL STATE IN CONTROVERSY BY** 22 **CLAIMING SHE SUFFERED EMOTIONAL DISTRESS AS A RESULT OF** 23 **DEFENDANTS’ ALLEGED CONDUCT**

24 **A. Plaintiff’s Condition is in Controversy.**

25 There is no question whatsoever that Plaintiff has placed her mental and emotional condition in
26 controversy for, among other things, the following reasons: (a) she claims that as a result of Defendants’
27 conduct she suffered from emotional distress; (b) she filed another lawsuit in March 2018, claiming that
28 she suffered from severe emotional distress as a result of conduct caused by a parties other than

Defendants in this matter for alleged injuries that occurred during the time frame; and (c) Plaintiff testified during her deposition that she suffered from, and continues to suffer from, severe emotional distress as a result of treatment and death of her beloved pet in March 2017. Any one of these facts would establish the propriety of the requested IME. Collectively, they mandate it.

Finding that a condition is “in controversy” generally poses no great difficulty. *See* *Reuter v. Superior Court* (1979) 93 Cal.App.3d 332, 341. “Allegations of physical or mental injury in the complaint and denial of the injury or the extent of injury places the condition in controversy.” *Id.* Medical examinations may be ordered where the plaintiff alleges “great mental pain and suffering.” *Id.* at 340. In *Vinson v. Superior Court*, the California Supreme Court made clear that “a party who chooses to allege that she has mental and emotional difficulties can hardly deny her mental state is in controversy.” *Vinson v. Superior Court* (1987) 43 Cal.3d 833, 839. The Court further held:

In the case at bar, plaintiff haled defendants into court and accused them of causing her various mental and emotional ailments. Defendants deny her charges. As a result, the existence and extent of her mental injuries is indubitably in dispute. In addition, by asserting a causal link between her mental distress and defendants’ conduct, plaintiff implicitly claims it was not caused by a preexisting mental condition, thereby raising the question of alternative sources for the distress. We thus conclude that her mental state is in controversy. (Emphasis added.)

As in *Vinson*, Plaintiff’s mental condition here is “in controversy” for several reasons. As explained above, Plaintiff placed her mental condition “in controversy” by alleging that she has suffered, and continues to suffer, severe emotional distress.” (Cohen Decl. ¶ 2, Exhibit A, ¶¶ 124, 126, 127, 147, and 158.)

Plaintiff also links Defendants’ alleged misconduct to her purported emotional trauma, while Defendants dispute Plaintiff’s mental and emotional injury allegations. Accordingly, Plaintiff has placed her mental and emotional state directly at issue; and Defendants have every right to test the veracity and existence of Plaintiff’s allegations.

B. There is Good Cause to Order the Mental Exam.

There is also good cause to compel Plaintiff to attend an IME. Good cause exists where the basis for mental examination has “relevancy to the subject matter,” and there are specific facts justifying the discovery. *Vinson*, *supra* 43 Cal.3d at 840-841. In ruling that the defendants had a right to a mental

1 examination of the plaintiff, the California Supreme Court in *Vinson* recognized that good cause was
2 shown where the plaintiff alleged continuing mental anguish and emotional distress. *Id.* at 840-841. In
3 finding “good cause,” for the requested exam the California Supreme Court reasoned:

4 Plaintiff in the case at bar asserts that she continues to suffer diminished
5 self-esteem, reduced motivation, sleeplessness, loss of appetite, fear,
6 lessened ability to help others, loss of social contacts, anxiety, mental
7 anguish, loss of reputation, and severe emotional distress. In their motion,
8 defendants pointed to these allegations. Because the truth of these claims
9 is relevant to plaintiff’s cause of action and justifying facts have been
10 shown with specificity, good cause as to these assertions has been
11 demonstrated. Subject to limitations necessitated by plaintiff’s right to
12 privacy, defendants must be allowed to investigate the continued existence
13 and severity of plaintiff’s alleged damages.

14 *Id.* at 840-841.

15 Like the complaining party in *Vinson*, Plaintiff alleges that as a result of Defendants’ conduct,
16 she suffered and continues to suffer mental and emotional distress – a claim Defendants deny. As of
17 April 2019, Plaintiff claims that she still suffering from depression and anxiety. Because Plaintiff claims
18 ongoing emotional distress, Defendants have the right to determine the source(s) of Plaintiff’s alleged
19 emotional distress. *Vinson*, 43 Cal.3d at 840-41; *contra*, *Doyle v. Superior Court* (1996) 50 Cal. App.
20 4th 1878, 1886-87.

21 **C. The Information Sought is Critical to Defendants’ Ability to Mount a Defense at**
22 **Trial.**

23 In order to mount an adequate defense to Plaintiff’s claims at trial, it is necessary for
24 Defendants’ experts to conduct the IME described above. Plaintiff’s mental condition is directly
25 relevant to Defendants’ defenses as to her claim for emotional distress, particularly because there is
26 clearly a dispute concerning the source(s) of Plaintiff’s emotional distress.

27 In particular, although Plaintiff’s Complaint and her discovery responses point to the source of
28 her emotional distress as PCHS’ alleged wrongful conduct, Plaintiff’s own deposition testimony– at a
minimum – raises questions about whether there are alternate causes of her emotional distress. For
example, Plaintiff admits she has filed another, unrelated lawsuit, in March 2018, in which she alleges
she suffered, and continues to suffer from, severe emotional distress resulting from the treatment and

1 death of her dog in 2017. In her deposition, Plaintiff confirmed that the allegations set forth in the
2 Access Lawsuit were accurate.

3 Hence, Defendants' expert must be permitted to inquire into Plaintiff's medical and
4 psychological history to adequately assess and evaluate the cause(s) of Plaintiff's emotional distress.
5 See *Vinson*, 43 Cal.3d at 840 ("by asserting a causal link between her mental distress and defendants'
6 conduct, plaintiff implicitly claims it was not caused by pre-existing mental conditions, thereby raising
7 the question of alternative sources for the distress")(emphasis added).

8 **V. DEFENDANTS COMPLIED WITH THE REQUIREMENTS OF THE CODE OF CIVIL**
9 **PROCEDURE.**

10 In bringing this Motion, Defendants complied with its meet and confer obligations under Code of
11 Civil Procedure § 2032.310 as set forth in above.

12 **VI. MONETARY SANCTIONS ARE WARRANTED FOR PLAINTIFF'S COUNSEL'S**
13 **ABUSE OF THE DISCOVERY PROCESS.**

14 The Court may impose monetary sanctions for engaging in conduct that is a misuse of the
15 discovery process:

16 The court may impose a monetary sanction ordering that one engaging in
17 the misuse of the discovery process, or any attorney advising that
18 conduct, or both pay the reasonable expenses, including attorney's fees,
19 incurred by anyone as a result of that conduct...If a monetary sanction is
20 authorized by any provision of this title, the court shall impose that
21 sanction unless it finds that the one subject to the sanction acted with
22 substantial justification or that other circumstances make the imposition
23 of the sanction unjust.

24 Code Civ. Pro. § 2023.030(a).

25 Misuse of the discovery process includes: (a) failing to submit to an authorized method of
26 discovery and (b) "[m]aking, without substantial justification, an unmeritorious objection to discovery."
27 Code Civ. Proc. 2023.010(d), (e). In this case, Plaintiff has no basis for refusing to appear at an IME,
28 particularly since she has put the cause of her alleged emotional distress directly at issue, as discussed
above.

Accordingly, Defendants believe that Plaintiff's refusal to appear for the IME is without
substantial justification and respectfully request that Plaintiff be ordered to pay sanctions in the amount

1 of \$1,820.00 which represents reasonable attorneys' fees incurred by Defendants in connection with this
2 Motion. (Cohen Decl., ¶ 15)

3 **VII. IF THE COURT IS INCLINED TO DENY DEFENDANTS' MOTION, DEFENDANTS**
4 **ALTERNATIVELY REQUEST THAT THE COURT EXCLUDE ALL EVIDENCE OF**
5 **PLAINTIFF'S ALLEGED EMOTIONAL DISTRESS DAMAGES**

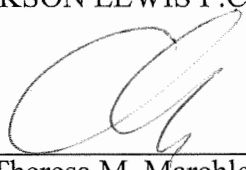
6 If Defendants are unable to have an independent expert examine Plaintiff to determine the
7 nature, extent, existence, cause and veracity of Plaintiff's alleged mental and emotional injuries,
8 Defendants will be unfairly prejudiced at trial and will be unable to present expert testimony about
9 possible alternative causes of Plaintiff's mental and emotional distress. As such, in the event that the
10 Court is inclined to deny this Motion, or if Plaintiff refrains from being examined, Defendants request
11 that the Court exclude all evidence of Plaintiff's mental, emotional or psychological injuries at trial.

12 **VIII. CONCLUSION**

13 Based on the foregoing, Defendants respectfully request that the Court grant their Motion.

14
15 Dated: May 13, 2019

JACKSON LEWIS P.C.

16
17 By: 

18 Theresa M. Marchlewski
19 Ellen E. Cohen

20 Attorneys for Defendants
21 PALISADES CHARTER HIGH SCHOOL and
22 AMY NGUYEN
23
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1 **PROOF OF SERVICE**

2 **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 **CASE NAME:** *Roya Saghafi v. Palisades Charter High School, et al.*

4 **CASE NUMBER:** BC708497

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
6 not a party to the within action; my business address is 725 South Figueroa Street, Suite 2500, Los Angeles, California 90017.

7 On **May 13, 2019**, I served the foregoing document described as:

8 **DEFENDANTS PALISADES CHARTER HIGH SCHOOL AND AMY NGUYEN'S**
9 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO**
10 **COMPEL INDEPENDENT MENTAL EXAMINATION OF PLAINTIFF; AND REQUEST FOR**
11 **MONETARY SANCTIONS**

12 in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as follows:

13 Ann A. Hull, Esq.
14 Hannah J. Robinson, Esq.
15 LAW OFFICES OF ANN A. HULL, INC.
16 21900 Burbank Boulevard, Third Floor
17 Woodland Hills, California 91367
18 Telephone: (818) 606-6618
19 Facsimile: (818) 322-1321

20 *Attorneys for Plaintiff*
21 *Roya Saghafi*

22 **[X] BY PERSONAL SERVICE** I caused to be delivered such document by hand to the above-
23 identified recipient through the use of **ACE Legal Attorney Services** whose address is: 811 Wilshire
24 Boulevard, Los Angeles, CA 90017, and whose telephone number is (213) 623-3979.

25 **[X] STATE** I declare under penalty of perjury under the laws of the State of California that the
26 above is true and correct.

27 Executed on **May 13, 2019** at Los Angeles, California.

28 
ARTHUR ESCALANTE